

Andrew Scott
February 05, 2018

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION
CASE NO.4:15-CV-003495

ESTATE OF JORDAN BAKER, by and through administrator,
JANET BAKER,

Plaintiff,
-vs-

JUVENTINO CASTRO, THE CITY OF HOUSTON, AND RPI
MANAGEMENT COMPANY, LLC,

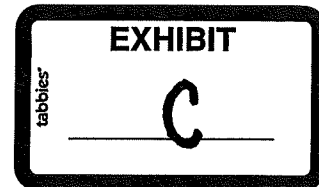
Defendants.

VIDEOTAPED DEPOSITION OF ANDREW J. SCOTT, III

Monday, February 5, 2018
10:00 - 3:00 p.m.

1900 Northwest Corporate Blvd.
Suite 200
Boca Raton, Florida 33431

Reported By:
Antoinette Garza, RPR, FPR
Notary Public, State of Florida



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APPEARANCES:

On behalf of the Plaintiff:

MARK LOEVY-REYES, ESQUIRE

LOEVY & LOEVY

311 N. Aberdeen

3rd Floor

Chicago, IL 60607

On behalf of the Defendants:

JENNIFER F. CALLAN, ESQUIRE

CAMELA J. SANDMANN, ESQUIRE

CITY OF HOUSTON CITY ATTORNEY

900 Bagby

3rd Floor

Houston, TX 77002

ALSO PRESENT:

U.S. LEGAL SUPPORT VIDEOGRAPHY

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PROCEEDINGS

- - -

Deposition taken before Antoinette Garza,

Registered Professional Reporter and Notary Public

in and for the State of Florida at Large, in the

above cause.

- - -

THE VIDEOGRAPHER: Good morning. We're now

on the video record. Today is Monday, the 5th day

of February 2018. The time on the monitor is

10:07 a.m. We're here at 1900 Northwest Corporate

Boulevard, Boca Raton, Florida, for the purpose of

taking the deposition of Andrew Jay Scott, III,

taken by the defendant in case number

415-CV-003495. The case is the Estate of Jordan

Baker versus Juventino Castro, et al, which was

filed in the Southern District of Texas.

The court reporter is Antoinette Garza of

U.S. Legal Support. The videographer is Michael

Hollander of U.S. Legal Support.

Would all counsel please state their

appearances for the record.

MS. CALLAN: Jennifer Callan, City of Houston

and Officer Castro.

THE VIDEOGRAPHER: Camela Sandmann, City of

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EXHIBITS

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Houston and Officer Castro.

MR. LOEVY-REYES: Mark Loevy-Reyes on behalf

plaintiff.

Thereupon,

(ANDREW J. SCOTT, III)

having been first duly sworn or affirmed, was examined

and testified as follows:

THE WITNESS: I do.

DIRECT EXAMINATION

BY MS. CALLAN:

Q. Mr. Scott, for the record could you please

state your full name?

A. Andrew Jay Scott, III.

Q. How are you currently employed?

A. I'm employed, I have a background screening

company called Scott-Roberts and Associates. That's

one of my companies. The other is AJS Consulting,

which I supply or provide, excuse me, expert witness

consultation to both plaintiffs and defense as well as

provide security assessments for companies that need

assessments of their particular facilities.

Q. We'll get into those in a little bit. But

before we start, you understand you are here for a

deposition that -- and you received a notice which I'm

marking as Exhibit 1.

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18 to 21

<p style="text-align: right;">Page 18</p> <p>1 Q. Those are the only photos you have of 2 Mr. Baker would be at the crime scene? 3 A. Yes. 4 Q. And you used all of these to formulate your 5 opinion that is in the exhibits that we have here 6 today? 7 A. Yes. 8 Q. Exhibit 2 actually. 9 Okay. Anything else? 10 A. I'm not understanding the question. 11 Q. Anything else that you reviewed? 12 A. Yes. I have material that I used to support 13 and substantiate my opinions. 14 Q. Okay. 15 A. They are all contained in this file right 16 here. 17 Q. What is your hourly rate, Mr. Scott? 18 A. I charge \$250 an hour. 19 Q. And when you were -- when you signed your 20 agreement on April 3rd, your letter of engagement, 21 what were you hired to actually do? 22 A. I was asked to provide my expert opinion on 23 the use of force relative to Mr. Baker, if it was 24 acceptable within police practices and procedures. And 25 also to take a look at the data relative to the</p>	<p style="text-align: right;">Page 20</p> <p>1 of Force, authored by Ronald G. Fryer, F-R-Y-E-R, Jr. 2 I'm not sure -- excuse me. It's July 2016 is when it 3 was published. 4 I reviewed an article from the American 5 Psychological Association titled, Policing In Black And 6 White. That was published in December of 2016, volume 7 47, number 11. 8 I reviewed an article from the International 9 Association of Chiefs of Police titled, Implicit Bias 10 Versus the Ferguson Effect, Psychological Factors 11 Impacting Officers' Decisions to Use Deadly Force. 12 That was February 2016. 13 I reviewed an article from Police One News, 14 titled, the Science of Training, Unpacking Implicit 15 Bias and Policing, dated November 7, 2016. 16 I reviewed a document referred to as the Law 17 of Implicit Bias through the Yale Law School Legal 18 Scholarship Repository. 19 I reviewed an article titled, The Reverse 20 Racism Effect, Are Cops More Hesitant To Shoot Black 21 Than White Suspects. That's dated 2016 through the 22 American Society of Criminology. And that's authored 23 by Lois James, Steven M. James and Brian J. Vila. 24 I reviewed the City of Houston demographic 25 profile 2015.</p>
<p style="text-align: right;">Page 19</p> <p>1 practices of Houston Police Department to see if there 2 is perhaps a disparity impact as to how the agency 3 deals with individuals of color or minorities. 4 Q. Anything else? 5 A. Not that I recall. 6 Q. And besides reviewing the documents that you 7 have in front of you, what other activities have you 8 undertaken to formulate your opinion in this case? 9 A. Other than conducting research based on the 10 information provided and writing my report, nothing 11 else. 12 Q. What research did you conduct? 13 A. I believe that you will find that research 14 noted in the group of documents I have here. Shall I 15 read them off to you? 16 Q. Please. 17 A. I reviewed the Mathematical Methods in the 18 Social Sciences, Houston, Texas Police Department 19 Project On Officer Involved Shooting, author by Anthony 20 L. Colucci, C-O-L-U-C-C-I, John Patrick McCleary, and 21 Yang G, I can't pronounce the last. I'll spell it. 22 N-G is the last name. It's out of Northwestern 23 University and it was published June 4, 2014. 24 I also reviewed a document titled, An 25 Imperial Analysis of Racial Differences in Police Use</p>	<p style="text-align: right;">Page 21</p> <p>1 I reviewed the Supreme -- United States 2 Supreme Court case, Terry v. Ohio. 3 I reviewed the International Association of 4 Chief of Police National Law Enforcement Policy Center 5 article titled, Foot Pursuits, Concepts and Issues 6 paper, February 2003. 7 I reviewed IACP, International Association of 8 Chiefs of Police Training Key, number 517 titled, 9 Suspects Who Run, Supreme Court Expands Terry Rule. 10 I reviewed the International Association of 11 Chiefs of Police Model Policy titled, Use of Force, 12 February 2006. 13 And I believe I also used the same policy but 14 updated by the IACP titled, Rest. I don't think I have 15 it with me. 16 I reviewed -- 17 Q. If it's not with you, you are not sure if you 18 have reviewed it or not? 19 A. I'm certain I reviewed it. It's just not 20 with me. 21 Q. Okay. 22 A. I reviewed IACP Training Key Number 387 23 titled, Stop and Frisk. 24 I reviewed training -- IACP Training Key 25 Number 552 titled, Foot Pursuits.</p>

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22 to 25

<p style="text-align: right;">Page 22</p> <p>1 I reviewed the expert report of Stephanie</p> <p>2 Sequino, University of Vermont, regarding this case,</p> <p>3 State of Jordan Baker v. Juventino Castro, et al.</p> <p>4 I reviewed expert reports provided by the</p> <p>5 defense, one authored by Terry A. Bratton, another</p> <p>6 expert report for the defense authored by Michael</p> <p>7 Anthony Dirden. And then I also reviewed a</p> <p>8 supplemental report, I believe it's by Officer Bratton</p> <p>9 based upon my supplemental report.</p> <p>10 I reviewed a number of articles that were</p> <p>11 provided to me by my client. Would you like me to go</p> <p>12 through them?</p> <p>13 Q. Yes, please.</p> <p>14 A. Sure. The one article is titled, Unarmed and</p> <p>15 Dangerous Bulletproof Part One from the Houston</p> <p>16 Chronicle Investigation. The title of it, I have</p> <p>17 already given that, I apologize. Another article, Hard</p> <p>18 To Charge Bulletproof, Part Three by the Houston</p> <p>19 Chronicle Investigation titled, Investigation Raised</p> <p>20 Questions About Whether Grand Jury System in Harris</p> <p>21 County Favors Police. Another article by the Houston</p> <p>22 Chronicle titled, A Crash, A Scream and Gunfire,</p> <p>23 Bulletproof Part Two. An article by the Texas</p> <p>24 Observer.org titled, The Horror Everyday Police</p> <p>25 Brutality in Houston Goes Unpunished. Another article</p>	<p style="text-align: right;">Page 24</p> <p>1 Man, published by Chron.com. Another article published</p> <p>2 Chron.com titled, Witness Dispute HPD's Account of</p> <p>3 Fatal Shooting.</p> <p>4 I think that's going to do it, ma'am.</p> <p>5 Q. Okay. So when I asked you about research, my</p> <p>6 apologies. I should have been more clear.</p> <p>7 Did you personally conduct any research, any</p> <p>8 running mathematical equations, go and conduct blood</p> <p>9 spatter, do any type of independent research</p> <p>10 investigation other than reading these articles?</p> <p>11 A. The only other research that I did relative</p> <p>12 to the statistical data provided in my reports was</p> <p>13 based upon the information that was provided by the</p> <p>14 Houston Police Department.</p> <p>15 Q. You didn't go out to the scene?</p> <p>16 A. No, I did not.</p> <p>17 Q. Have you ever been out to Houston to look at</p> <p>18 the scene of the crime?</p> <p>19 A. No.</p> <p>20 Q. Have you spoken to any of the witnesses that</p> <p>21 were named in any of the testimony that you were</p> <p>22 provided deposition testimony, grand injury testimony?</p> <p>23 A. No.</p> <p>24 Q. Have you spoken to anybody in Houston Police</p> <p>25 Department regarding this?</p>
<p style="text-align: right;">Page 23</p> <p>1 by the Texas Observer.org titled, Houston Cops Always</p> <p>2 Justified in Shootings Always. Another article by the</p> <p>3 Texas Observer.org titled, Crimes Unpunished at the</p> <p>4 Houston Police Department, a Lax Discipline System</p> <p>5 Keeps Negligent Cops On The Streets. Another article</p> <p>6 by the Texas Observer, Houston Cops Always Justified In</p> <p>7 Shootings Always. That might have been a repeat and I</p> <p>8 apologize if it was.</p> <p>9 Q. Is that it?</p> <p>10 A. No, ma'am.</p> <p>11 Q. Okay.</p> <p>12 A. Another article titled, Area Officers</p> <p>13 Continue To Be Cleared In Shootings. And it looks like</p> <p>14 it's coming from Chrons -- I apologize, CHRON.com.</p> <p>15 Another article titled, Grand Jury Never Told That Off</p> <p>16 Duty Police Officer Was Drunk When He Shot Unarmed</p> <p>17 Brothers, from the Houston Chronicle. Another article</p> <p>18 from the Houston Chronicle titled, HPD Cleared Officer</p> <p>19 in 2012 Shooting Without Considering Eyewitness</p> <p>20 Accounts, Witnesses Dispute Officers Account in 2012</p> <p>21 Shooting. Another article from Chron.com titled, One</p> <p>22 of Two Men Shot By Off-Duty Officer In Fight Dies.</p> <p>23 Another article by Chron.com titled, Police Focal and</p> <p>24 Officer in Deadly Shooting was Legally Intoxicated.</p> <p>25 The next article titled, HPD: Threatened Officer Kills</p>	<p style="text-align: right;">Page 25</p> <p>1 A. No.</p> <p>2 Q. Have you spoken to anybody at the Harris</p> <p>3 County District Attorney regarding their investigation?</p> <p>4 A. No.</p> <p>5 Q. So is it fair to say then that your</p> <p>6 investigation or your research to formulate your</p> <p>7 opinions was based on reviewing of documents only?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. And with regard -- we'll get into this in</p> <p>10 more detail. But with regards to newspaper articles,</p> <p>11 did you verify any of the information provided in those</p> <p>12 articles?</p> <p>13 A. No, ma'am, I did not.</p> <p>14 Q. Do you know if any newspaper or news media</p> <p>15 verifies their information?</p> <p>16 A. Well, ma'am, based on most of the articles</p> <p>17 that I -- well, the articles that I had relative to</p> <p>18 statistical data, that data was retrieved from the</p> <p>19 Houston Police Department. And there was no issue of</p> <p>20 dispute of the legitimacy of that data that I had.</p> <p>21 Q. Okay. But did you call anybody who wrote</p> <p>22 those articles and ask what their data source? You</p> <p>23 know it's from Houston Police Department, but the</p> <p>24 parameters of their data source was?</p> <p>25 A. No, ma'am.</p>

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26 to 29

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<p>1 Q. So you don't know if they had reviewed -- if</p> <p>2 they got for hypothetical purposes 100 pieces of</p> <p>3 documents, 100 documents of various reports from the</p> <p>4 Houston Police Department, and they only considered two</p> <p>5 of those; would you know that?</p> <p>6 A. Well, based on the articles, they didn't say</p> <p>7 they considered only two of them. They considered, I</p> <p>8 think, hundreds.</p> <p>9 MS. CALLAN: Objection, nonresponsive.</p> <p>10 THE WITNESS: I believe I was.</p> <p>11 BY MS. CALLAN:</p> <p>12 Q. Sir, when I make an objection, you don't get</p> <p>13 to respond back.</p> <p>14 A. Okay.</p> <p>15 Q. Please, the question was, did you contact</p> <p>16 anybody who wrote these articles to ask them what the</p> <p>17 parameters of their database was?</p> <p>18 A. No, I didn't have to because based on the</p> <p>19 article it appeared that they had a sufficient amount</p> <p>20 of data and they provided that number.</p> <p>21 Q. But you are making a presumption that you</p> <p>22 didn't verify, correct?</p> <p>23 A. I'm not presuming. I'm telling you that I</p> <p>24 did not verify from the source.</p> <p>25 Q. In the newspaper articles, did they have a</p>	<p>1 article though.</p> <p>2 Q. Not every article. So some articles are</p> <p>3 bias?</p> <p>4 MR. LOEVY-REYES: Objection, foundation.</p> <p>5 Go ahead.</p> <p>6 THE WITNESS: They could be. I'm not saying</p> <p>7 they are. I'm not making that judgment.</p> <p>8 BY MS. CALLAN:</p> <p>9 Q. But we can agree that you didn't contact</p> <p>10 anybody to verify the veracity of the information in</p> <p>11 the reports?</p> <p>12 A. That's correct. That's what I have testified</p> <p>13 to.</p> <p>14 Q. Well, let's discuss because you had several</p> <p>15 reports that are newspaper articles that referenced the</p> <p>16 grand jury in Houston.</p> <p>17 Are you familiar with Texas law?</p> <p>18 A. No, not completely. Absolutely not.</p> <p>19 Q. Do you understand the grand jury system in</p> <p>20 Texas?</p> <p>21 A. I would only imagine it's very similar to</p> <p>22 that of the state of Florida based on what I have read.</p> <p>23 Q. Tell me what the state of Florida does, and I</p> <p>24 will tell you what the state of Texas does?</p> <p>25 A. Sure. Here Florida convenes civilians to act</p>
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<p>1 footnote indicating how many documents they reviewed</p> <p>2 and how many documents they did not review in the data</p> <p>3 source?</p> <p>4 A. I don't recall.</p> <p>5 Q. That would be something important, correct?</p> <p>6 A. It would be helpful.</p> <p>7 Q. Because they might be skewed one way versus</p> <p>8 another, correct?</p> <p>9 A. Could be.</p> <p>10 Q. So usually a newspaper article is bias in</p> <p>11 one -- towards one person or one thing, correct?</p> <p>12 A. I don't know about that.</p> <p>13 Q. Okay. You don't -- did these newspaper</p> <p>14 articles that you relied on, did they give both sides</p> <p>15 of the story?</p> <p>16 A. Based on what the information was provided in</p> <p>17 the reports versus what was -- people that were</p> <p>18 interviewed, they gave that balance. Did they</p> <p>19 interview anybody from the police department, yes, they</p> <p>20 did.</p> <p>21 Q. Did they state that in the articles?</p> <p>22 A. Yes.</p> <p>23 Q. Did they give the police department side of</p> <p>24 the story in the articles?</p> <p>25 A. Based on my recollection, yes, not every</p>	<p>1 as jurors in grand jury.</p> <p>2 Q. Who convenes them?</p> <p>3 A. The state attorney. The state attorney then</p> <p>4 presents its case. Relative to the facts of the case,</p> <p>5 they bring individuals to testify. Normally, it is</p> <p>6 one-sided, normally. And when I say one-sided, they</p> <p>7 will present the case. If there's eyewitnesses, they</p> <p>8 will have the eyewitnesses also present their</p> <p>9 testimony. And then they present the case to the grand</p> <p>10 jury for the grand jury to make their decision whether</p> <p>11 there is a true bill or not.</p> <p>12 Q. So the determination of what is presented to</p> <p>13 a grand jury is determined by the Florida state's</p> <p>14 attorney general?</p> <p>15 A. Correct.</p> <p>16 Q. And the state's attorney general is separate</p> <p>17 and apart from any police department, correct?</p> <p>18 A. Are you referring to the state attorney</p> <p>19 general or the state attorney's office?</p> <p>20 Q. Both. Is the state attorney general the</p> <p>21 local police department?</p> <p>22 A. No.</p> <p>23 Q. Is the state attorney general's office, the</p> <p>24 attorneys themselves part of the local police</p> <p>25 department?</p>

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58 to 61

<p style="text-align: right;">Page 58</p> <p>1 Florida publications?</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. And even the IACP one was based on Florida</p> <p>4 law?</p> <p>5 A. You are referring to the crime prevention?</p> <p>6 Q. Yes. Your personal knowledge of Florida, did</p> <p>7 it include stats from other agencies in other states?</p> <p>8 A. There was no -- I'm sorry to interrupt.</p> <p>9 There were no statistic based on what I</p> <p>10 recall.</p> <p>11 Q. Okay.</p> <p>12 A. It was describing our crime prevention model,</p> <p>13 and it did not deal specifically with a state. It</p> <p>14 could be quite applicable to anybody in the nation if</p> <p>15 they wanted to use it.</p> <p>16 Q. Fair enough. But your knowledge is based on</p> <p>17 Florida, your Florida background, right?</p> <p>18 A. Not necessarily.</p> <p>19 Q. Florida law enforcement?</p> <p>20 A. I'm a Florida law enforcement officer who has</p> <p>21 dealt with a number of agencies around the country in</p> <p>22 various states.</p> <p>23 Q. This is your first Texas case though,</p> <p>24 correct?</p> <p>25 A. I don't recall.</p>	<p style="text-align: right;">Page 60</p> <p>1 however, I have had cases that involved Texas</p> <p>2 jurisdictions.</p> <p>3 Q. Which Texas jurisdiction?</p> <p>4 A. Don't recall.</p> <p>5 Q. When was it then?</p> <p>6 A. Probably about 2012.</p> <p>7 Q. And you don't recall what entity was</p> <p>8 involved?</p> <p>9 A. No, offhand I don't. It did involve a police</p> <p>10 pursuit though.</p> <p>11 MS. CALLAN: I would ask, counsel, that we</p> <p>12 leave a line in the deposition so that Mr. Scott</p> <p>13 can include the Texas jurisdiction that he has</p> <p>14 just referenced.</p> <p>15 MR. LOEVY-REYES: I'm not agreeable to that.</p> <p>16 You are certainly welcome to examine him on the</p> <p>17 context of the case, but I don't see the relevance</p> <p>18 of it, first of all. Yeah, I just don't see the</p> <p>19 relevance of it.</p> <p>20 BY MS. CALLAN:</p> <p>21 Q. Mr. Scott, when you were involved in this</p> <p>22 Texas review, was it for plaintiff or defendant?</p> <p>23 A. Plaintiff.</p> <p>24 Q. And you believe it was in 2012 involving a</p> <p>25 pursuit?</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. So if we go --</p> <p>2 A. I don't think so.</p> <p>3 Q. If we go through your list of cases that you</p> <p>4 have on Exhibit 4. It was on your CV.</p> <p>5 A. Are you looking for my testimony list, ma'am?</p> <p>6 Q. Yes, sir.</p> <p>7 A. I don't know what you did with it.</p> <p>8 Q. It was attached to your report, your</p> <p>9 October 12 report, and it should be attached to</p> <p>10 Exhibit 4.</p> <p>11 MR. LOEVY-REYES: Was the curriculum vitae</p> <p>12 Number 1?</p> <p>13 MS. CALLAN: No. Number 1 was the notice of</p> <p>14 deposition. Number 2 is the October 12 report.</p> <p>15 Number 3 is the supplemental report.</p> <p>16 (Defendant's Exhibit No. 3 was</p> <p>17 marked for identification.)</p> <p>18 THE WITNESS: Here is Number 4.</p> <p>19 MR. LOEVY-REYES: There you go.</p> <p>20 THE WITNESS: So your question, again, ma'am?</p> <p>21 BY MS. CALLAN:</p> <p>22 Q. The testimony list on Exhibit 4, does it say</p> <p>23 anywhere in there any Texas cases?</p> <p>24 A. No, because I have not testified or given</p> <p>25 deposition in a case involving a Texas jurisdiction,</p>	<p style="text-align: right;">Page 61</p> <p>1 A. It's a guess, yes.</p> <p>2 Q. You are not sure -- did you provide a report?</p> <p>3 A. I may have.</p> <p>4 Q. But you are saying you did not go to a</p> <p>5 deposition?</p> <p>6 A. No, I did not. The case settled prior to any</p> <p>7 other testimony.</p> <p>8 Q. Do you remember the attorney who hired you?</p> <p>9 A. No, not offhand.</p> <p>10 Q. Do you remember the case?</p> <p>11 A. No. Well, when you say the case, the case</p> <p>12 name or the circumstances?</p> <p>13 Q. The case name.</p> <p>14 A. No.</p> <p>15 Q. Do you remember if it was in federal or state</p> <p>16 court?</p> <p>17 A. It was federal.</p> <p>18 Q. And was it a pursuit -- was there a death?</p> <p>19 A. Yes.</p> <p>20 Q. So what were you asked to review?</p> <p>21 A. I was asked to review if the pursuit fell</p> <p>22 within generally accepted police practices and</p> <p>23 procedures.</p> <p>24 Q. In Texas law or generally across the nation?</p> <p>25 A. Both.</p>

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62 to 65

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<p>1 Q. When you do a report in a specific 2 jurisdiction, though, isn't it necessary to know the 3 specific state law? 4 A. Sure. 5 Q. Did you learn the specific state law in 2012 6 for Texas? 7 A. I don't recall, ma'am. I have probably 500 8 cases that I have been involved with. 9 Q. But is it your practice to learn state law 10 for the given case in a specific jurisdiction? 11 A. Sometimes, yes. 12 Q. Sometimes. What do you mean sometimes? 13 A. Sometimes. Sometimes I do, sometimes I 14 don't. 15 Q. Why wouldn't you learn the specific state 16 law? 17 A. It depends on the case, ma'am. 18 Q. And in this death case in 2012 and this death 19 case herein that we're here today with the Baker case, 20 did you learn Texas law? 21 A. Did I learn it, ma'am, or did I -- I'm not 22 quite sure when you say did I learn it. 23 Q. Did you review it? 24 A. You know, I think -- I don't recall if I read 25 the statute on use of force in the state of Texas. I</p>	<p>1 conclusion based on your understanding of your 2 interpretation of that case law? 3 A. Well, not at all. I'm not providing any 4 legal opinion. What I am doing though is using my 5 expertise, training and knowledge predicated on those 6 particular cases that I have used in my career and 7 making an opinion as to the delivery of police 8 practices and procedures relative to the court cases. 9 I'm not giving any legal opinion. 10 Q. Your opinions in our Exhibit 2 and Exhibit 3 11 are void of any reference to Texas law? 12 A. That's correct. 13 Q. But it's important to know Texas law because 14 you are referencing federal cases that interpret 15 Tennessee v. Garner was interpreting a Tennessee 16 statute, not a Texas statute. Were you aware of that? 17 MR. LOEVY-REYES: Objection, foundation, 18 calls for a legal conclusion. 19 You could go ahead. 20 THE WITNESS: I am, ma'am. But the United 21 States Supreme Court guides all behavior as it 22 relates to whatever the case might be. So if the 23 state of Texas is going to violate Tennessee v. 24 Garner, I suspect that there is going to be a 25 number of lawsuits and/or other issues so.</p>
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<p>1 don't recall if I did or not. 2 Q. That would be something important, wouldn't 3 you agree? 4 A. Sure. 5 Q. And that would go to your credibility as an 6 expert is for you to reference state law? 7 MR. LOEVY-REYES: Objection, foundation, 8 calls for a legal conclusion. 9 You could go ahead. 10 THE WITNESS: I'm not quite sure if that's 11 going to question my credibility, ma'am. I just 12 don't recall, I've had so many documents to 13 review. 14 BY MS. CALLAN: 15 Q. In your opinion that you gave in Exhibit 2 16 and Exhibit 3 -- well, more Exhibit 2, you reference 17 law, right? You reference Terry v. Ohio, Tennessee v. 18 Garner, Graham v. Connor; yes? 19 A. Yes, those are the United States Supreme 20 Court cases. 21 Q. Are you a lawyer? 22 A. No, ma'am. 23 Q. Have you been to law school? 24 A. No, ma'am. 25 Q. So you are reading these and giving a legal</p>	<p>1 MS. CALLAN: Objection, nonresponsive and 2 narrative. 3 BY MS. CALLAN: 4 Q. Mr. Scott, I wasn't asking you if Texas law 5 violated Tennessee v. Garner. But you did not consider 6 Texas law when you were looking at Tennessee v. Garner, 7 did you? 8 A. I don't recall. 9 Q. You didn't look at Chapter 9 of the Texas 10 Penal Code, did you? 11 A. No, I did not. 12 Q. Did you look at the Texas Code of Criminal 13 Procedures as to the use of force? 14 A. That I recall. I think I did, but I just 15 don't know when. 16 Q. Okay. Do you know the chapter? 17 A. No, no, I don't. 18 MS. CALLAN: Can I take a quick break? 19 THE VIDEOGRAPHER: Time on the monitor is 20 11:20. We're going off video record. 21 (A break was had.) 22 THE VIDEOGRAPHER: We're back on video 23 record. The time is 11:31 a.m. 24 BY MS. CALLAN: 25 Q. Mr. Scott, Exhibit 2 and Exhibit 3 have been</p>

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74 to 77

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<p>1 Q. So you were running a consulting firm during</p> <p>2 the last couple of years of being chief of police?</p> <p>3 A. Yes, ma'am.</p> <p>4 Q. And that AJS does review 1983 lawsuits?</p> <p>5 A. It does now, but specifically when I was</p> <p>6 chief of police, the only consulting services I</p> <p>7 provided was on accreditation.</p> <p>8 Q. So do you recall when you started reviewing</p> <p>9 1983 lawsuits?</p> <p>10 A. Yes, ma'am, in 2006.</p> <p>11 Q. Right after you retired. Well, close to</p> <p>12 retirement?</p> <p>13 A. No, ma'am. I apologize. I'm not trying to</p> <p>14 mince your words. But, no, not right after. Probably</p> <p>15 in November of 2006. Retired out of law enforcement in</p> <p>16 February 2006.</p> <p>17 Q. Okay, okay. So since about November 2006 to</p> <p>18 today approximately how many 1983 lawsuits have you</p> <p>19 reviewed?</p> <p>20 A. Approximately 450 to 475.</p> <p>21 Q. And I believe you had testified earlier that</p> <p>22 you had not provided deposition or trial testimony in</p> <p>23 all of those, correct?</p> <p>24 A. That's correct.</p> <p>25 Q. And as far as you can recall sitting here</p>	<p>1 what you are saying.</p> <p>2 Q. The opposing counsel says that you are not</p> <p>3 qualified to be an expert.</p> <p>4 A. Oh.</p> <p>5 Q. What we call in legal terms, and counsel here</p> <p>6 will correct me if I'm wrong, is it a Daubert</p> <p>7 challenge.</p> <p>8 A. Yes, I understand. No, I wasn't aware of</p> <p>9 that. That's news to me.</p> <p>10 Q. So you were unaware that you were challenged</p> <p>11 on the basis that you make impermissible credibility</p> <p>12 determinations and legal conclusions?</p> <p>13 A. No, ma'am.</p> <p>14 Q. Do you know what TCOLE stands for?</p> <p>15 A. I'm sorry.</p> <p>16 Q. T-C-O-L-E?</p> <p>17 A. No.</p> <p>18 Q. It's a Texas Commission On Law Enforcement.</p> <p>19 A. Okay.</p> <p>20 Q. Which is the state licensing entity for</p> <p>21 Texas.</p> <p>22 A. Understood.</p> <p>23 Q. Since you didn't -- are you aware of TCOLE or</p> <p>24 you just had never heard it called TCOLE?</p> <p>25 A. I wasn't aware of the acronym, no.</p>
Page 75	Page 77
<p>1 today, you have only had one other Texas 1983 suit,</p> <p>2 lawsuit that you reviewed?</p> <p>3 A. Based on recollection, that's correct.</p> <p>4 Q. How do you -- what is your percentage of</p> <p>5 review for plaintiff on 1983 cases?</p> <p>6 A. About 75 to 80 percent.</p> <p>7 Q. Generally are you deposed and provide trial</p> <p>8 testimony in these cases?</p> <p>9 A. No.</p> <p>10 Q. Have you ever given testimony in Texas</p> <p>11 regarding a 1983 case?</p> <p>12 A. No.</p> <p>13 Q. Have you ever been challenged as an expert in</p> <p>14 any 1983 case?</p> <p>15 A. Not to my recollection.</p> <p>16 Q. What about the Lisa Thompson vs. Officer</p> <p>17 Davenport, Miami-Dade County case. Do you recall that?</p> <p>18 A. The name sounds familiar. I don't know what</p> <p>19 had transpired on that.</p> <p>20 Q. So if I told you that the court documents</p> <p>21 show you were challenged, that would be the first you</p> <p>22 knew about it?</p> <p>23 A. Yes, ma'am.</p> <p>24 Q. Well, there are court documents.</p> <p>25 A. When you say challenged, I'm not quite sure</p>	<p>1 Q. It used to be called TCOLE notes. Does that</p> <p>2 ring a bell?</p> <p>3 A. No.</p> <p>4 Q. They just changed it two years ago to TCOLE.</p> <p>5 Do you know what the annual requirements are</p> <p>6 in Texas to maintain your law enforcement license?</p> <p>7 A. I believe there's a minimum mandatory of four</p> <p>8 hours. I'm not sure if it's a year or if it's every</p> <p>9 two years or four years. I apologize for that.</p> <p>10 Q. Do you know what TCOLE requires to become</p> <p>11 certified in the state of Texas.</p> <p>12 A. Offhand, no, I do not know the number of</p> <p>13 hours that's required of that.</p> <p>14 Q. Do you know how TCOLE breaks down police</p> <p>15 officer certification?</p> <p>16 A. No.</p> <p>17 Q. You don't know what levels or hierarchy that</p> <p>18 they have?</p> <p>19 A. No, ma'am.</p> <p>20 Q. We've already testified that all of your</p> <p>21 opinions today are in Exhibits 2 and 3, correct?</p> <p>22 A. Yes, ma'am.</p> <p>23 Q. Do you plan on appearing at trial to testify</p> <p>24 in this case?</p> <p>25 A. Yes, ma'am.</p>

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<p style="text-align: right;">Page 78</p> <p>1 Q. You provided a list of your cases attached to 2 your CV. We have discussed that briefly; yes? 3 A. Yes, ma'am. 4 Q. Have you ever provided an opinion based on 5 that list of cases that an officer involved shooting 6 was, some people say justified, I say within policy. 7 But I'm letting you know the two mean the 8 same thing. 9 A. Yes. Your question is clear. 10 I don't recall. 11 Q. Does that mean -- let me ask it this way. If 12 you had provided an opinion stating that a shooting, an 13 officer involved shooting was within policy, it would 14 stand out in your mind since the majority of your case 15 work is plaintiff based? 16 A. No, that's not what I'm saying. It's just 17 that I don't recall. 18 Q. It's possible though? 19 MR. LOEY-REYES: Objection, foundation, 20 calls for speculation. 21 Go ahead. 22 THE WITNESS: It's possible. 23 BY MS. CALLAN: 24 Q. Have you ever been to Houston, Texas? I'm 25 sure there's other Houstons.</p>	<p style="text-align: right;">Page 80</p> <p>1 what you have read in the documents provided? 2 A. No, I do not. 3 Q. Do you know any of the -- any of the chain of 4 command at the police department today, the chief of 5 police, his assistants, any of them? 6 A. No. 7 Q. Have you ever met them at IACP? 8 A. Not to my recollection, but it would not be 9 surprising if I did. 10 Q. Because you are a life member, correct? 11 A. Yes, ma'am. 12 Q. As well as I am, so. 13 And I will agree with you or you can agree 14 with me IACP has multiple seminars that you could go 15 to, so you could go with somebody from your own agency 16 and never see them until it's time to go home? 17 A. Correct. 18 Q. So this happened in 2014. Did you know Chief 19 McClelland, Charles McClelland? 20 A. The name was familiar to me, but no, I don't 21 believe I ever met him. 22 Q. Familiar in what sense? 23 A. His name had come up in circles that I knew 24 in IACP, that's all, that he was the chief of police of 25 Houston Police Department.</p>
<p style="text-align: right;">Page 79</p> <p>1 A. I believe I have, but I remained in the 2 airport. 3 Q. Didn't venture out into the community? 4 A. The time between flights wouldn't allow me. 5 Q. So is it fair to say that you are not 6 familiar with the community as a whole, personal 7 knowledge of the community as a whole? 8 A. No. 9 Q. No, you have no personal knowledge? 10 A. That is correct. 11 Q. And I think, I believe you've already 12 testified that you have never been to the location of 13 this shooting, correct? 14 A. That's correct. 15 Q. And I will tell you that the location, just 16 for clarification of the record, was 5700 West Little 17 York Road in Houston. 18 Do you plan to go out there before you come 19 to trial? 20 A. That's going to be solely up to my client. 21 Q. And you have not discussed that with him? 22 A. At this juncture, no. 23 Q. And I believe you've already testified, so if 24 I am repetitive forgive me. But do you have personal 25 knowledge of the Houston Police Department other than</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. But you never met him? 2 A. No, I have not. 3 Q. And I believe we touched on this briefly, but 4 you are not familiar with the Texas Code of Criminal 5 Procedure? 6 A. Not completely, no, I'm not. 7 Q. And you are not familiar with the Texas Penal 8 Code? 9 A. No. 10 Q. How about the Texas local government code? 11 A. No, ma'am. 12 Q. How about the Texas Occupations Code? 13 A. No, ma'am. 14 Q. So would you be surprised if all of those 15 govern various aspects of the Houston Police 16 Department? 17 A. I'm not surprised at all because it's 18 similarly applicable here in the state of Florida. 19 Q. Are you familiar with the Houston Code of 20 Ordinances? 21 A. No. 22 Q. How about the Houston Charter, city charter? 23 A. No, ma'am, I haven't reviewed those. 24 Q. You would agree with me, though, that the 25 operation of a police department is governed by</p>

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<p style="text-align: right;">Page 86</p> <p>1 of force, Chapter 9 of the penal code?</p> <p>2 A. I don't recall specifically if that's the</p> <p>3 area that I looked at.</p> <p>4 Q. What about penal code 9.32, when deadly force</p> <p>5 can be used?</p> <p>6 A. Most likely that's what I read.</p> <p>7 Q. What about the Code of Criminal Procedure</p> <p>8 regarding the use of force?</p> <p>9 A. I don't recall.</p> <p>10 Q. What about Code of Criminal Procedure</p> <p>11 regarding when an officer can make a warrantless arrest</p> <p>12 and use force?</p> <p>13 A. That, I don't recall.</p> <p>14 Q. You would agree with me that these are all</p> <p>15 parameters that a Texas police officer would have to</p> <p>16 comply with?</p> <p>17 MR. LOEVY-REYES: Objection, foundation,</p> <p>18 calls for a legal conclusion.</p> <p>19 Go ahead.</p> <p>20 THE WITNESS: I would imagine that they</p> <p>21 would.</p> <p>22 BY MS. CALLAN:</p> <p>23 Q. So did you read Article 6.05 of the Texas</p> <p>24 Code of Criminal Procedure, on duties of police</p> <p>25 officers when they are threatened?</p>	<p style="text-align: right;">Page 88</p> <p>1 when a weapon is involved?</p> <p>2 A. Yes.</p> <p>3 Q. And that the weapon could be anything based</p> <p>4 on the manner and means of its use?</p> <p>5 A. Particularly if it's going to inflict bodily</p> <p>6 harm or death.</p> <p>7 Q. And anything can inflict bodily harm,</p> <p>8 correct?</p> <p>9 A. I don't understand that, ma'am.</p> <p>10 Q. Anything in the manner and means of its use</p> <p>11 could inflict bodily harm?</p> <p>12 MR. LOEVY-REYES: Objection, foundation.</p> <p>13 But you could go ahead and answer.</p> <p>14 THE WITNESS: I'm still not understanding</p> <p>15 what you are trying to get at. I apologize.</p> <p>16 BY MS. CALLAN:</p> <p>17 Q. If I pick up a pen and come at you, and if I</p> <p>18 hit you just right in the neck, it could cause bodily</p> <p>19 harm or even death, correct?</p> <p>20 MR. LOEVY-REYES: Objection, relevance.</p> <p>21 Go ahead.</p> <p>22 THE WITNESS: Sure.</p> <p>23 BY MS. CALLAN:</p> <p>24 Q. So anything could be used as a weapon based</p> <p>25 on manner and means of its use?</p>
<p style="text-align: right;">Page 87</p> <p>1 A. I may have, but I don't specifically recall.</p> <p>2 Q. But again, your opinion is void of any</p> <p>3 reference to Texas law?</p> <p>4 A. True.</p> <p>5 Q. Did you review the Texas penal statute on</p> <p>6 what an assault was?</p> <p>7 A. No, I did not.</p> <p>8 Q. Did you know that assaulting a police officer</p> <p>9 is a felony in the state of Texas?</p> <p>10 A. I would imagine it is.</p> <p>11 Q. A weapon is involved, it becomes an</p> <p>12 aggravated assault?</p> <p>13 A. Is that a question?</p> <p>14 Q. Yes.</p> <p>15 A. It's a statement. Are you asking?</p> <p>16 Q. I asked you, do you understand that if a</p> <p>17 weapon is involved during the assault, it becomes an</p> <p>18 aggravated assault?</p> <p>19 MR. LOEVY-REYES: Objection, relevance.</p> <p>20 THE WITNESS: I apologize. Yes.</p> <p>21 BY MS. CALLAN:</p> <p>22 Q. As a law enforcement officer, you know the</p> <p>23 difference between -- let me ask it this way.</p> <p>24 As a law enforcement officer, do you</p> <p>25 understand that usually an offense becomes aggravated</p>	<p style="text-align: right;">Page 89</p> <p>1 MR. LOEVY-REYES: Objection, foundation.</p> <p>2 Go ahead.</p> <p>3 THE WITNESS: For sake of this deposition,</p> <p>4 that global ubiquitous "anything," yes.</p> <p>5 BY MS. CALLAN:</p> <p>6 Q. For instance, are you aware of Texas case law</p> <p>7 that says a peanut butter and jelly sandwich could be</p> <p>8 used as a weapon if someone is shoving it down your</p> <p>9 thought?</p> <p>10 MR. LOEVY-REYES: Objection, relevance.</p> <p>11 THE WITNESS: I'm not aware of that.</p> <p>12 BY MS. CALLAN:</p> <p>13 Q. It goes to manner and means, you would agree</p> <p>14 with that; yes?</p> <p>15 MR. LOEVY-REYES: Same objection.</p> <p>16 THE WITNESS: Sure.</p> <p>17 BY MS. CALLAN:</p> <p>18 Q. So in your analysis when you were a chief of</p> <p>19 police, you looked at manner and means of the object;</p> <p>20 yes?</p> <p>21 A. I would imagine I did.</p> <p>22 Q. Certainly would you in today's world, a hand,</p> <p>23 a fist could be used in the manner and means it's used</p> <p>24 because we have some MMA fighters, if it's used just</p> <p>25 right or if you hit the person just right, manner and</p>

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94 to 97

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<p>1 dismissed by the judge.</p> <p>2 Q. Any other lawsuits?</p> <p>3 A. Not to my knowledge.</p> <p>4 Q. Any car accident lawsuits?</p> <p>5 A. No.</p> <p>6 Q. Any divorces?</p> <p>7 A. Yep. Yes. Excuse me.</p> <p>8 Q. When was your divorce?</p> <p>9 A. I'm not going to answer that question. You</p> <p>10 could have it certified.</p> <p>11 MR. LOEY-REYES: I'm going to make a late</p> <p>12 objection on relevance.</p> <p>13 BY MS. CALLAN:</p> <p>14 Q. But it was a lawsuit?</p> <p>15 A. Sorry?</p> <p>16 Q. The divorce was a lawsuit that was filed?</p> <p>17 A. I'm not aware that's a lawsuit.</p> <p>18 Q. But a petition was filed?</p> <p>19 A. Yes.</p> <p>20 Q. Do you still maintain your police officer</p> <p>21 certification?</p> <p>22 A. No.</p> <p>23 Q. Why don't you maintain it?</p> <p>24 A. No need to. No desire to.</p> <p>25 Q. Florida allows retirement to continue with</p>	<p>1 A. Yes. As chief of police I was sanctioned by</p> <p>2 the ethics commission. Well, actually it was after my</p> <p>3 tenure as chief of police.</p> <p>4 Q. But for conduct during your tenure as chief</p> <p>5 of police?</p> <p>6 A. Yes.</p> <p>7 Q. And it was the ethics?</p> <p>8 A. Florida State Ethics Commission.</p> <p>9 Q. Is that your licensing, they are part of the</p> <p>10 Florida licensing?</p> <p>11 A. No.</p> <p>12 Q. What was the -- what were you sanctioned for?</p> <p>13 A. I was sanctioned for allowing a news reporter</p> <p>14 to get an interview of a contractor within my community</p> <p>15 that scammed an elderly couple. The news reporter made</p> <p>16 it very clear that the individual that she wanted to</p> <p>17 get an interview from was running red lights, running</p> <p>18 stop signs, driving erratically. And she wanted to</p> <p>19 have us post an officer at his intersection down the</p> <p>20 block because he was going to run the stop sign. And</p> <p>21 then she had asked if she could possibly get an</p> <p>22 interview if he was stopped and issued a citation.</p> <p>23 That occurred. It happened exactly the way</p> <p>24 she said it. And when my officer was finished writing</p> <p>25 the summons, he told the driver, you are free to leave.</p>
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<p>1 your certification after you retire?</p> <p>2 A. You can, yes.</p> <p>3 Q. When you were a police officer, were you ever</p> <p>4 disciplined by your agency?</p> <p>5 A. Yes, for a traffic crash when I was a rookie</p> <p>6 police officer in North Miami.</p> <p>7 Q. This shooting in 1988, there was a separate</p> <p>8 investigation?</p> <p>9 A. Yes.</p> <p>10 Q. Administrative and criminal?</p> <p>11 A. Yes.</p> <p>12 Q. You weren't -- you were taken before a grand</p> <p>13 jury?</p> <p>14 A. No.</p> <p>15 Q. No, you weren't personally in front of the</p> <p>16 grand jury or, no, you don't know if your case went</p> <p>17 before a grand jury?</p> <p>18 A. I was not taken before a grand jury and the</p> <p>19 case was not brought before the grand jury.</p> <p>20 Q. Were you disciplined?</p> <p>21 A. No.</p> <p>22 Q. So the shooting was found to be within</p> <p>23 policy?</p> <p>24 A. Yes.</p> <p>25 Q. Any other discipline?</p>	<p>1 And because the news reporter was coming with the</p> <p>2 cameraman. And ultimately he stayed, and the issue of</p> <p>3 the shoddy construction work was resolved. But the</p> <p>4 union took exception to that and felt that I misused my</p> <p>5 position as chief of police.</p> <p>6 Q. When you were sanctioned, how did that impact</p> <p>7 your law enforcement license, if any?</p> <p>8 A. It didn't.</p> <p>9 Q. It just was placed on your record?</p> <p>10 A. Not even. Well, when you say record, no.</p> <p>11 Was it placed on my law enforcement career record, no,</p> <p>12 it wasn't. It was sanctioned through the governor's</p> <p>13 office.</p> <p>14 Q. Okay. With regards to the lawsuit that we</p> <p>15 have here today, are you familiar with Officer</p> <p>16 Juventino Castro?</p> <p>17 A. Only as much as I have read.</p> <p>18 Q. Through the documents that were presented to</p> <p>19 you by plaintiff's counsel, correct?</p> <p>20 A. Yes, ma'am.</p> <p>21 Q. You have never contacted anybody in the</p> <p>22 Houston Police Department regarding him?</p> <p>23 A. No.</p> <p>24 Q. Anybody in Texas law enforcement regarding</p> <p>25 him?</p>

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<p style="text-align: right;">Page 106</p> <p>1 A. That's correct, ma'am. Yes. My apologies 2 for that.</p> <p>3 Q. Let's look at number 61, if you would. The 4 HPD annual racial profiling statistical comparative 5 report from 2009 to 2016.</p> <p>6 Are you aware of the statutory requirement 7 regarding racial profiling reporting in Texas.</p> <p>8 A. No, I'm not familiar with it verbatim, but I 9 know in general it's a requirement for the police 10 department is to produce that report.</p> <p>11 Q. And what else do you understand about that 12 law?</p> <p>13 A. That's it.</p> <p>14 Q. Do you understand or are you aware that it 15 only focuses on motor vehicle stops?</p> <p>16 A. Yes, ma'am, that's my understanding.</p> <p>17 Q. And this case is not involving a motor 18 vehicle stop?</p> <p>19 A. No, it does not.</p> <p>20 Q. And that motor vehicle stops -- would you 21 agree with me motor vehicle stops in any jurisdiction 22 can be based on -- let me rephrase that.</p> <p>23 When law enforcement conducts a traffic stop, 24 the individual may or may not be part of the community 25 in which the stop is being made. For instance, it</p>	<p style="text-align: right;">Page 108</p> <p>1 traffic stop?</p> <p>2 A. Yes, predicated upon a violation of the law 3 or has reasonable suspicion that an individual has been 4 involved in some type of crime or there's a crime 5 afoot. But has to have articulable reasonable 6 suspicion.</p> <p>7 Q. When you render expert opinions, do you 8 normally rely on newspaper articles as your basis to 9 formulate an opinion?</p> <p>10 A. Sometimes.</p> <p>11 Q. And you find these reliable sources?</p> <p>12 A. It depends.</p> <p>13 Q. When you were formulating your opinion in 14 this case, did you conduct any research as to how 15 municipalities in Texas handle their use of force?</p> <p>16 A. I don't understand.</p> <p>17 Q. Did you do any independent studies or 18 research, call anybody in other Texas cities to see how 19 they handle use of force so that you could compare them 20 to Houston?</p> <p>21 A. When you say handle use of force, I didn't 22 call any agency. But I'm not understanding when you 23 say, how they handle use of force.</p> <p>24 Q. Did you call them to ask them how they 25 investigate use of force?</p>
<p style="text-align: right;">Page 107</p> <p>1 could be somebody traveling through the city?</p> <p>2 A. Sure.</p> <p>3 Q. But that is a statistic that would be 4 replaced in a traffic stop?</p> <p>5 A. Sure.</p> <p>6 Q. And on number 63, HPD IAD investigation 7 summaries, number 63, are officer involved shootings, 8 correct?</p> <p>9 A. That's correct, yes, ma'am.</p> <p>10 Q. Anything else that you asked for?</p> <p>11 A. I'm sorry. That I asked for?</p> <p>12 Q. Yes. Anything else that you asked for other 13 than the statistician's report?</p> <p>14 A. No, everything else was supplied to me.</p> <p>15 Q. And then just real quick, if you will look at 16 the November 12th report, anything in there?</p> <p>17 A. That I specifically asked for, no, these were 18 supplied to me by --</p> <p>19 Q. No, no, that you used to formulate your 20 stats.</p> <p>21 A. Oh, I'm sorry.</p> <p>22 No.</p> <p>23 Q. Okay.</p> <p>24 Is a, based on your law enforcement training 25 and experience an officer has discretion to conduct a</p>	<p style="text-align: right;">Page 109</p> <p>1 A. No, ma'am.</p> <p>2 Q. How they draft their policies for use of 3 force?</p> <p>4 A. No.</p> <p>5 Q. How they conduct training on use of force?</p> <p>6 A. No.</p> <p>7 Q. Would that be something necessary to 8 formulate an opinion?</p> <p>9 A. Not necessarily, no.</p> <p>10 Q. Did you consult with any municipality in 11 formulating this opinion?</p> <p>12 A. No.</p> <p>13 Q. When you were formulating your opinion, did 14 you have -- discuss it with any of your peers?</p> <p>15 A. No.</p> <p>16 Q. Did you discuss it with any other experts?</p> <p>17 A. No.</p> <p>18 Q. Did you talk with, I believe your partner, 19 Mr. Roberts, in your Scott-Roberts firm?</p> <p>20 A. No.</p> <p>21 Q. Did you give drafts of your report to anybody 22 to review?</p> <p>23 A. Yes.</p> <p>24 Q. Who?</p> <p>25 A. That would be Mr. Owens, and it was a draft.</p>

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<p style="text-align: right;">Page 110</p> <p>1 Q. And I believe you already testified that you</p> <p>2 did not conduct any independent investigations into</p> <p>3 this case?</p> <p>4 A. I did not.</p> <p>5 Q. In arriving at your conclusions, did you make</p> <p>6 any assumptions regarding the case?</p> <p>7 A. No.</p> <p>8 Q. When you formulate an expert opinion, do you</p> <p>9 consider all the evidence equally?</p> <p>10 A. Yes, of course.</p> <p>11 Q. So in this case, did you give equal weight to</p> <p>12 the independent witness, Ms. Reyes?</p> <p>13 A. Yes.</p> <p>14 Q. And that would be reflected in your opinion?</p> <p>15 A. It's indicative in my report, sure.</p> <p>16 Q. Exhibit Number 2, point to me where in</p> <p>17 opinions one through five you relied on Ms. Reyes?</p> <p>18 A. Oh, I apologize. No, they are not in the</p> <p>19 opinions per se. They are in the summary and they are</p> <p>20 considered as part of my overall deciding which</p> <p>21 opinions I'm going to have.</p> <p>22 Q. When formulating your opinions, did you make</p> <p>23 credibility determinations based on witnesses in this</p> <p>24 case?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 112</p> <p>1 A. Okay. So which opinion are you referring to?</p> <p>2 Q. This is your complete opinion as of</p> <p>3 October 12, correct?</p> <p>4 A. Okay.</p> <p>5 Q. Pages 1 through 5?</p> <p>6 A. So collectively you are saying --</p> <p>7 Q. What methodology did you use to formulate</p> <p>8 those opinions?</p> <p>9 A. I first and foremost researched the material</p> <p>10 that was provided to me by my client. I reviewed</p> <p>11 material from the Houston Police Department,</p> <p>12 particularly policies. I used IACP model policies and</p> <p>13 training keys to assist in determining my opinions.</p> <p>14 I also used my knowledge, experience and</p> <p>15 training to formulate my opinions so that was my</p> <p>16 methodology.</p> <p>17 Q. Let's discuss, I think we both have different</p> <p>18 perception and definition of what the word research</p> <p>19 means.</p> <p>20 When I ask if you have researched something,</p> <p>21 I'm asking did you go out and conduct any studies, if</p> <p>22 you reviewed an article, did you verify the information</p> <p>23 that was used in that article to form their opinions.</p> <p>24 Did you do anything independently to come up with your</p> <p>25 opinions, when I say research.</p>
<p style="text-align: right;">Page 111</p> <p>1 Q. Did you choose to believe facts provided to</p> <p>2 you by plaintiff's counsel versus what was actually in</p> <p>3 the case?</p> <p>4 A. Plaintiff supplied me only the facts that</p> <p>5 were provided to them. Plaintiff did not -- I'm sorry.</p> <p>6 My attorney did not provide me with any facts outside</p> <p>7 the case.</p> <p>8 Q. Are your conclusions based on your perception</p> <p>9 of facts provided to you by plaintiff's counsel?</p> <p>10 A. Repeat the question. Sorry.</p> <p>11 Q. Are your conclusions, are your opinions based</p> <p>12 on your perception of the facts as provided to you by</p> <p>13 plaintiff's counsel.</p> <p>14 A. My opinions are based upon the facts</p> <p>15 presented by your agency and your agency alone, in</p> <p>16 addition to the research material that I used to</p> <p>17 support my basis.</p> <p>18 Q. And research material or the newspaper</p> <p>19 articles, the IACP stuff that we already discussed?</p> <p>20 A. In part.</p> <p>21 Q. What was the methodology you used to</p> <p>22 formulate the opinion in Exhibit 2?</p> <p>23 A. Which opinion?</p> <p>24 Q. In Exhibit 2, your October 12th report.</p> <p>25 No, this one, sir.</p>	<p style="text-align: right;">Page 113</p> <p>1 A. My opinions are based upon my independent</p> <p>2 thoughts predicated upon research so, and my training</p> <p>3 and experience. So what I first do is I -- and if I'm</p> <p>4 answering your question, I don't want to belabor this.</p> <p>5 So when I first get a case, I'm reviewing all of the</p> <p>6 material that's presented to me. And then from that, I</p> <p>7 then can take a look at the particular practices and</p> <p>8 procedures, perhaps promulgated by the agency or by the</p> <p>9 IACP or the Police Executive Research Forum.</p> <p>10 And then from there I develop my basis as to</p> <p>11 my opinions and formulate my opinions. And then</p> <p>12 subsequently I provide them in writing.</p> <p>13 Did I answer that question?</p> <p>14 Q. Yes, yes, you did.</p> <p>15 The articles though that you referred to were</p> <p>16 given to you, the newspaper articles were given to you</p> <p>17 by plaintiff's attorney. You didn't go pull those</p> <p>18 yourself, did you?</p> <p>19 A. No, I didn't.</p> <p>20 Q. What about the IACP stuff, did you pull it</p> <p>21 yourself?</p> <p>22 A. I did.</p> <p>23 Q. I don't recall any reference to any PERF</p> <p>24 article. Is there PERF articles that you referred to?</p> <p>25 A. No, not in this particular case.</p>

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<p style="text-align: right;">Page 162</p> <p>1 A. I'm not perceiving anything. I'm telling you 2 what I'm seeing from my law enforcement experience and 3 what I could see in the deposition -- excuse me, in the 4 video. 5 Q. You say on Page 13 the video clearly shows 6 Mr. Baker riding his bicycle past the Little Caesars 7 store, but there is no evidence that Mr. Baker was 8 casing the premises. Rather Mr. Baker was casually 9 riding his bicycle and may have looked into the store 10 front, which does not remotely indicate somebody casing 11 the place. 12 We have already discussed that, and that's 13 your perception of what you see in the video; yes? 14 A. Yes, ma'am. 15 Q. It's not based on any actual investigation or 16 methodology, is it? 17 A. It's based on the information that I received 18 from my client provided by Houston Police Department. 19 That's what I have to base my opinion on. 20 Q. Anywhere in opinion one did you take into 21 account, since we're talking about totality of 22 circumstances, the description of Mr. Baker given by 23 Ms. Reyes? 24 A. The description provided by Ms. Baker. What 25 are you saying? I'm sorry. I'm missing something.</p>	<p style="text-align: right;">Page 164</p> <p>1 started to pedal quickly. 2 Based on everything I have seen, that's not 3 necessarily the case. Mr. Baker was black. He's 4 wearing a ubiquitous hoody. He is riding in sandals 5 and it does not fit the method of operation of the 6 previous robbers. So therefore there is no articulable 7 reasonable suspicion other than Mr. Baker is black and 8 he's wearing a hoody. 9 Q. So the fact that he is in a hoody, a dark 10 hoody, African American male, what Officer Castro 11 believes to be casing, the unprovoked flight, robberies 12 being committed -- he is present on the property where 13 robberies are being committed during the time of day or 14 time of night, his aggressive behavior, and that's not 15 enough to ask him under Terry v. Ohio to additional 16 questions? 17 A. Well, a couple of things. You are testifying 18 of what I'm saying. I'm telling you that you're 19 claiming that he's engaged in flight when video doesn't 20 indicate that he is pedaling any faster, although he 21 may have turned away. 22 The second thing, if I was Mr. Baker, I would 23 be pissed the way I got stopped by Officer Castro. 24 Sure, almost get hit by a car or at least the car is 25 positioned in such a way to prevent me from traveling</p>
<p style="text-align: right;">Page 163</p> <p>1 Q. The description of Mr. Baker provided by 2 Ms. Reyes. 3 A. Yes, what about it. I'm sorry. 4 Q. Did you take that into consideration in 5 opinion one? 6 A. Yes. 7 Q. Where is that? 8 A. I didn't cite it. 9 Q. Would Mr. Baker's aggressive behavior be 10 something that needs to be taken into consideration 11 when analyzing totality of circumstances? 12 A. Yes. 13 Q. On Page 14 you say, quote, actions of Officer 14 Castro were inconsistent with generally accepted police 15 practices and procedures. 16 That's a pretty general statement. So what 17 are these specific police practices and procedures you 18 are referencing? 19 A. Sure. As it relates to articulable 20 reasonable suspicion, Officer Castro had a hunch that 21 perhaps Mr. Baker might be a robbery suspect based upon 22 a few things; number one, Mr. Baker was a black male. 23 Number two; Mr. Baker was wearing a hoody; that 24 Mr. Baker was casing the stores; and that when upon 25 seeing Officer Castro, he immediately turned away and</p>	<p style="text-align: right;">Page 165</p> <p>1 out of the parking lot, sure, I would be a little 2 pissed, absolutely. 3 So given that, given all of that, I don't 4 think there was articulable reasonable suspicion to 5 stop Mr. Baker. 6 MS. CALLAN: Objection, nonresponsive. 7 BY MS. CALLAN: 8 Q. So you are basically making a credibility 9 determination on what Officer Castro said? 10 MR. LOEVY-REYES: Objection, that misstates 11 testimony. 12 THE WITNESS: Not at all. Not at all. 13 BY MS. CALLAN: 14 Q. Are you supplying legal standards in this 15 opinion? 16 A. I'm not an attorney, ma'am. 17 MR. LOEVY-REYES: Objection, foundation, 18 legal opinion. I was going to say answer anyway. 19 BY MS. CALLAN: 20 Q. Let's go to opinion number two on Page 14. 21 Under basis it says, according to the 22 American Psychological Association -- do you see that? 23 A. Yes. 24 Q. And that is referencing the WEIR article that 25 you referenced?</p>

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<p>1 A. Yes.</p> <p>2 Q. And have you recently read this article?</p> <p>3 A. Maybe a month ago.</p> <p>4 Q. And has it been peer reviewed?</p> <p>5 A. Don't recall.</p> <p>6 Q. Would that be something you should check</p> <p>7 before relying on it?</p> <p>8 A. Not necessarily, ma'am.</p> <p>9 The American Psychological Association is a</p> <p>10 reputed association, and the fact that it's being</p> <p>11 published within the publication associated with the</p> <p>12 American Psychological Association, they would not just</p> <p>13 arbitrarily print anything that was either not</p> <p>14 consistent with their standards and what have you. So</p> <p>15 being peer reviewed, no.</p> <p>16 Q. What does peer review mean to you?</p> <p>17 A. That means your fellow peers, those that are</p> <p>18 in the same business, either have reviewed it and/or</p> <p>19 conducted additional testing based upon your hypothesis</p> <p>20 and conclusions.</p> <p>21 Q. So its an intensive evaluation of the</p> <p>22 analytical validity of the proposed conclusion; isn't</p> <p>23 that the actual definition of peer reviewed?</p> <p>24 A. I wouldn't know, ma'am. But since you quoted</p> <p>25 it, I imagine you are correct.</p>	<p>1 A. Sure.</p> <p>2 Q. And where is the list of other studies that</p> <p>3 they referenced to come up with that conclusion?</p> <p>4 A. I believe there is an article that I cited as</p> <p>5 to -- use to support my facts. It's here from the</p> <p>6 police chief magazine that also states that black</p> <p>7 American males -- or excuse me, African American males</p> <p>8 based on a perception are considered to be either</p> <p>9 dangerous or possess a weapon.</p> <p>10 MS. CALLAN: Objection, nonresponsive.</p> <p>11 BY MS. CALLAN:</p> <p>12 Q. My question, sir, was where are those</p> <p>13 articles referenced in here that they relied on?</p> <p>14 MR. LOEVY-REYES: Objection, foundation and</p> <p>15 relevance. But go ahead.</p> <p>16 THE WITNESS: May I take a look at it?</p> <p>17 Thank you.</p> <p>18 Well, there's a number of them here. Further</p> <p>19 reading, racial bias and policing, why we know</p> <p>20 less than we should, final report of the</p> <p>21 president's task force on 21st century policing,</p> <p>22 implicit bias and policing, and then related</p> <p>23 articles, adoption of implicit bias is hasty.</p> <p>24 I'm not understanding your question.</p> <p>25 BY MS. CALLAN:</p>
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<p>1 Q. Do you know if an intensive evaluation has</p> <p>2 been done on this article?</p> <p>3 A. Not to my knowledge.</p> <p>4 Q. Is it your opinion that everything that the</p> <p>5 APA prints has to be valid because they printed it?</p> <p>6 A. No, not necessarily. But they wouldn't print</p> <p>7 trash, and so because one individual author has a</p> <p>8 different opinion doesn't necessarily mean that it's</p> <p>9 not valid or it can't be used as a substance for basis.</p> <p>10 Q. But that's not what we're talking about here.</p> <p>11 We're talking is how do you know the information in</p> <p>12 this is valid if you don't know it's been peer</p> <p>13 reviewed?</p> <p>14 A. With regards to the conclusion that was cited</p> <p>15 here with regards to black African Americans being</p> <p>16 considered, as I stated in the report, one of the most</p> <p>17 well demonstrated types of implicit bias is the</p> <p>18 unconscious association between black individuals and</p> <p>19 crime. That association can influence an officer's</p> <p>20 behavior even if she doesn't hold or express explicitly</p> <p>21 racist beliefs.</p> <p>22 And by the way, that comment has also been</p> <p>23 supported by other studies.</p> <p>24 Q. We're not talking about other studies though,</p> <p>25 we're talking about this article right here, sir.</p>	<p>1 Q. That doesn't mean -- further reading does not</p> <p>2 mean that they were actually relied upon, does it?</p> <p>3 A. It might be.</p> <p>4 Q. It does not necessarily mean that it was</p> <p>5 though, was it, because they would have to cite it to</p> <p>6 in this article?</p> <p>7 MR. LOEVY-REYES: Objection, foundation and</p> <p>8 argumentative.</p> <p>9 THE WITNESS: Okay.</p> <p>10 BY MS. CALLAN:</p> <p>11 Q. They are just saying additional reading,</p> <p>12 further reading, additional reading, correct?</p> <p>13 MR. LOEVY-REYES: Objection, foundation.</p> <p>14 Go ahead.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MS. CALLAN:</p> <p>17 Q. Is anywhere in this article do they reference</p> <p>18 the Houston Police Department?</p> <p>19 A. No.</p> <p>20 Q. But in this article they do state that roots</p> <p>21 of disparity aren't always clear. Do you recall that?</p> <p>22 A. That's correct.</p> <p>23 Q. And also in this article they state that</p> <p>24 psychologists have preconceived ideas about law</p> <p>25 enforcement, so a preconceived idea tends to make one</p>

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<p style="text-align: right;">Page 170</p> <p>1 bias. Isn't that what they are saying?</p> <p>2 A. Or it could skew the results or the</p> <p>3 interpretation of the results.</p> <p>4 Q. They also say that implicit bias looks at</p> <p>5 one's character; yes?</p> <p>6 A. Repeat the question.</p> <p>7 Q. Do you recall this article stating that</p> <p>8 implicit bias looks at one's character?</p> <p>9 A. I don't recall off the top of my head.</p> <p>10 Q. Do you recall this statement from this</p> <p>11 article it says, character is a weak predictor of</p> <p>12 behavior, but situations are strong predictors of</p> <p>13 behavior?</p> <p>14 A. Yes.</p> <p>15 Q. So what does that mean to you?</p> <p>16 A. That a nebulous concept of character can't be</p> <p>17 considered a good particular of -- a particular action</p> <p>18 of an individual.</p> <p>19 Q. Or that they are saying, in essence, you need</p> <p>20 to look at the totality of circumstances and what's</p> <p>21 happening at that time?</p> <p>22 A. Well, they are not using those terms. They</p> <p>23 are saying other factors come into play.</p> <p>24 Q. But in essence, that's what they are saying</p> <p>25 when they say that the situation is a strong predictor</p>	<p style="text-align: right;">Page 172</p> <p>1 because we are different people, the way we behave to a</p> <p>2 situation is going to be based on the individual?</p> <p>3 MR. LOEVY-REYES: Objection, relevance,</p> <p>4 mischaracterizes prior testimony.</p> <p>5 Go ahead.</p> <p>6 THE WITNESS: Sure.</p> <p>7 MR. LOEVY-REYES: Well, you already have.</p> <p>8 BY MS. CALLAN:</p> <p>9 Q. The paper still says there's a lot to learn on</p> <p>10 this. And this is basically meaning this is not</p> <p>11 indicative of anything, right?</p> <p>12 A. I don't understand indicative of anything</p> <p>13 part of the question. I'm sorry.</p> <p>14 Q. Does the paper state they still have a lot to</p> <p>15 learn?</p> <p>16 A. Sure.</p> <p>17 Q. And the paper states that there's still</p> <p>18 information that needs to be deduced?</p> <p>19 A. No dispute.</p> <p>20 Q. So how can this be reliable?</p> <p>21 MR. LOEVY-REYES: Objection, foundation.</p> <p>22 BY MS. CALLAN:</p> <p>23 Q. Regarding the Houston Police Department?</p> <p>24 MR. LOEVY-REYES: Foundation. Go ahead.</p> <p>25 THE WITNESS: Because it cites a possible</p>
<p style="text-align: right;">Page 171</p> <p>1 of behavior?</p> <p>2 A. Yes.</p> <p>3 Q. Because you and I could be in the same</p> <p>4 situation but we're going to act differently, correct?</p> <p>5 A. We might.</p> <p>6 Q. Well, but you are older than I am I'm going</p> <p>7 to bet; yes? I'm 50, so you are older than me?</p> <p>8 A. The jury doesn't need to hear that.</p> <p>9 Q. So the answer is yes?</p> <p>10 MR. LOEVY-REYES: Object to relevance.</p> <p>11 BY MS. CALLAN:</p> <p>12 Q. And I was raised in Upstate New York. You</p> <p>13 were raised in Florida?</p> <p>14 A. No.</p> <p>15 Q. Well, most of your career has been in</p> <p>16 Florida?</p> <p>17 A. Yes.</p> <p>18 Q. So we have been raised differently; yes?</p> <p>19 MR. LOEVY-REYES: Objection, foundation.</p> <p>20 You could go ahead.</p> <p>21 THE WITNESS: Ma'am, I can't answer that</p> <p>22 question. I don't know anything about you.</p> <p>23 BY MS. CALLAN:</p> <p>24 Q. Exactly, that's what I'm trying to get, we</p> <p>25 are different. So if we're in the same situation</p>	<p style="text-align: right;">Page 173</p> <p>1 implicit bias by individuals related to law</p> <p>2 enforcement. It's just one of a number of</p> <p>3 articles that are out there that talk about</p> <p>4 implicit bias and what it is, and so why wouldn't</p> <p>5 I want to use that.</p> <p>6 BY MS. CALLAN:</p> <p>7 Q. It doesn't reference Officer Juventino</p> <p>8 Castro, does it?</p> <p>9 A. Directly into the article?</p> <p>10 MR. LOEVY-REYES: Objection, relevance.</p> <p>11 Go ahead.</p> <p>12 BY MS. CALLAN:</p> <p>13 Q. Yes.</p> <p>14 A. No.</p> <p>15 Q. And it doesn't directly or specifically</p> <p>16 reference the Houston Police Department?</p> <p>17 MR. LOEVY-REYES: Objection to relevance.</p> <p>18 Go ahead.</p> <p>19 THE WITNESS: No.</p> <p>20 BY MS. CALLAN:</p> <p>21 Q. And because we don't know if this has been</p> <p>22 peer reviewed or not, and it says itself that more</p> <p>23 information needs to be done and that psychologists</p> <p>24 have a preconceived notion of law enforcement, it's not</p> <p>25 really reliable?</p>

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<p>1 MR. LOEVY-REYES: Objection, foundation, 2 relevance, argumentative. 3 Go ahead. 4 THE WITNESS: I disagree. 5 BY MS. CALLAN: 6 Q. Let's go on to the next one. 7 Well, let me go back. Did you participate in 8 any of these racial bias studies that are referenced in 9 this APA article? 10 A. No, ma'am. 11 Q. Your knowledge of this article is limited to 12 this article? 13 A. My knowledge of the article is limited to 14 this article. 15 Q. Did you call Dr. Weir? 16 A. No. 17 Q. Did you call anybody at APA? 18 A. No, ma'am. 19 Q. Did you reach out to any of the organizations 20 referenced in here? 21 A. No, ma'am. 22 Q. Did you reach out to any of the other 23 psychologists that are referenced in here? 24 A. No. 25 Q. Did you look up anything under the NCBI</p>	<p>1 (A break was had.) 2 THE VIDEOGRAPHER: We're back on video 3 record. The time is 2:00 o'clock p.m. 4 MS. CALLAN: Mr. Scott, I'm going to go back 5 before we get into the Fryer report that's marked 6 as Exhibit 11. And I want you to look at Exhibit 7 12 and 13 that I handed you. 8 (Defendant's Exhibit Nos. 12 & 9 13 were marked for 10 identification.) 11 BY MS. CALLAN: 12 Q. Twelve is the homicide statement given by 13 Officer Castro, and 13 is a summary of his, well, 14 actually it's a cut and paste version of his IED 15 statement. 16 When we're discussing your term or your 17 opinion that he, meaning Mr. Baker, was forcibly 18 stopped by Officer Castro, we went through the grand 19 jury testimony and we went through the deposition 20 testimony, and you correct me if I'm wrong, stated I 21 believe it's in one of his statements. 22 These are the only two statements, and I'm 23 asking you to see where it says in there that it was 24 forcibly stopped. 25 A. And in retrospect, ma'am, I know that in one</p>
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<p>1 website? 2 A. No, I did not. 3 Q. So your knowledge of the information in this 4 article is this article itself? 5 A. Sure. 6 Q. You did not go and do independent 7 investigation? 8 A. No. Why would I? 9 Q. You do not know what the methodology that was 10 used to garner this information? 11 A. No, other than what's described in there. 12 Q. Let's look at Dr. Fryer's article. 13 Was this peer reviewed? 14 A. I believe it was. 15 MS. CALLAN: So on the first page -- I'm 16 going to mark this Exhibit 11. 17 (Defendant's Exhibit No. 11 was 18 marked for identification.) 19 MS. CALLAN: Counsel, I will make a clean 20 copy. It will be marked as Exhibit 11. 21 MR. LOEVY-REYES: Exhibit Number 11. Okay. 22 MS. CALLAN: Could we go off the record for a 23 second? 24 THE VIDEOGRAPHER: Time on monitor is 1:51. 25 We're going off video record.</p>	<p>1 of his statements, whether it's written or deposition 2 or grand jury, that he indicated, and I could not find 3 it right now unless we spend another hour, I cannot 4 find it. But I'm certain that he indicated that he 5 pulled in front of Mr. Baker and caused him to stop, is 6 my recollection. 7 Q. All right. That's fine. But we read the 8 deposition testimony where he said side by side; do you 9 recall that? 10 A. Yes, ma'am. 11 Q. And we read the grand jury testimony where he 12 said that he pulled -- we read the grand jury testimony 13 also, and there was no indication that he pulled in 14 front, do you remember that? 15 A. Okay. It states in his -- looks like his 16 witness statement, that's Exhibit 12. 17 Q. His homicide statement? 18 A. Could it be Baker COH00342. He states, I 19 finally drove in the fourth full -- I'm sorry, the 20 fourth paragraph, middle of the paragraph, I finally 21 drove up a little past him and asked him to stop for a 22 second because I needed to talk to him. This time the 23 male finally acknowledged me and stopped his bike. I 24 got out of my car to talk to him. 25 Q. May I see that?</p>

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<p>1 But a little past him does not mean he</p> <p>2 stopped in front of him?</p> <p>3 A. Based on the video -- excuse me, the crime</p> <p>4 scene photographs, ma'am, it is very indicative that he</p> <p>5 used his car to compel him to stop.</p> <p>6 Q. So Exhibit Number 10, show me where it's</p> <p>7 indicative that you forcibly compelled him to stop, is</p> <p>8 your testimony.</p> <p>9 A. This is probably not the actual location of</p> <p>10 where Mr. Baker ultimately dropped his or initially</p> <p>11 stopped. You have Officer Castro's car who's edging in</p> <p>12 a direction that is preventing Mr. Baker from riding</p> <p>13 along the hedge line. And as a result, Mr. Baker must</p> <p>14 have assumed that he couldn't go any farther or was</p> <p>15 going to get struck by the car.</p> <p>16 Q. You are speculating as to what Mr. Baker was</p> <p>17 thinking, correct?</p> <p>18 A. Let me put it this way.</p> <p>19 Q. It's a simple yes or no.</p> <p>20 MR. LOEVY-REYES: I'm going to object. That</p> <p>21 mischaracterizes his testimony.</p> <p>22 BY MS. CALLAN:</p> <p>23 Q. It's a simple yes or no question. Are you</p> <p>24 speculating what Mr. Baker is thinking?</p> <p>25 A. No.</p>	<p>1 Go ahead.</p> <p>2 THE WITNESS: No.</p> <p>3 BY MS. CALLAN:</p> <p>4 Q. So it's based on your opinion. You don't</p> <p>5 know what either party was thinking, correct? There's</p> <p>6 no evidence that he struck the bike, correct?</p> <p>7 A. That's not my testimony.</p> <p>8 Q. My question is very simple, sir. And if you</p> <p>9 don't understand it, let me know and I will rephrase</p> <p>10 it.</p> <p>11 A. You were asking multiple questions in one</p> <p>12 line of questioning, ma'am.</p> <p>13 Q. You don't know what Mr. Castro -- I'm sorry,</p> <p>14 Officer Castro was thinking, correct?</p> <p>15 A. No, other than what he's testified to.</p> <p>16 Q. You don't know what Mr. Baker was thinking,</p> <p>17 correct?</p> <p>18 A. No, he's dead.</p> <p>19 Q. You don't know -- I'm sorry. There's no</p> <p>20 evidence that the car came in contact with this</p> <p>21 bicycle?</p> <p>22 A. There is no evidence and I never testified to</p> <p>23 that.</p> <p>24 Q. And you -- Let's go to Exhibit Number 11,</p> <p>25 Mr. Fryer or Dr. Fryer's report.</p>
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<p>1 Q. You know what Mr. Baker was thinking?</p> <p>2 MR. LOEVY-REYES: Objection, mischaracterizes</p> <p>3 testimony.</p> <p>4 THE WITNESS: You just asked me if I was</p> <p>5 speculating on what Mr. Baker was thinking, and I</p> <p>6 said, no, ma'am, I'm not.</p> <p>7 BY MS. CALLAN:</p> <p>8 Q. So, no, you are not speculating?</p> <p>9 A. No, I'm not speculating.</p> <p>10 Q. Are you saying that the bicycle was moved in</p> <p>11 this picture?</p> <p>12 A. No, I'm not saying that it was moved, but</p> <p>13 most likely was not the initial position of the bike</p> <p>14 when Mr. Baker was stopped.</p> <p>15 Remember, Mr. Baker drops the bicycle. So</p> <p>16 what I'm stating to you is that this is not a normal</p> <p>17 path by which Officer Castro would be driving his car</p> <p>18 other than to block his way.</p> <p>19 Q. And that's based on your opinion?</p> <p>20 A. It's based upon my law enforcement experience</p> <p>21 when I have attempted to pull in front of somebody to</p> <p>22 ensure that they either don't go in a direction I want</p> <p>23 them to.</p> <p>24 Q. Do you know what Officer Castro was thinking?</p> <p>25 MR. LOEVY-REYES: Objection, foundation.</p>	<p>1 The question I posed to you before we went on</p> <p>2 break was was this article peer reviewed. And you</p> <p>3 testified you believed it was. Do you remember that?</p> <p>4 A. Yes, ma'am.</p> <p>5 Q. On the very first page there at the bottom</p> <p>6 says Baker POA001576?</p> <p>7 A. Yes.</p> <p>8 Q. Above the copyright 2016, read that paragraph</p> <p>9 please, for the record?</p> <p>10 A. Which?</p> <p>11 Q. The paragraph that starts MBER working</p> <p>12 papers.</p> <p>13 A. Sure. Okay. My mistake.</p> <p>14 Q. Please read it for the record.</p> <p>15 A. Sure. MBER working papers are circulated for</p> <p>16 discussion and common purposes. They have not been</p> <p>17 peer reviewed or subject to the review by the MBER</p> <p>18 board of directors that accompanies official MBER</p> <p>19 publications.</p> <p>20 Q. So that means it wasn't peer reviewed,</p> <p>21 correct?</p> <p>22 A. That's correct.</p> <p>23 Q. Did you contact Mr. Fryer?</p> <p>24 A. No, I did not.</p> <p>25 Q. Did you contact anybody in this article?</p>

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<p>1 A. No.</p> <p>2 Q. So your review of this article is simply</p> <p>3 based on your reading of the article only?</p> <p>4 A. Yes.</p> <p>5 Q. No independent investigation by you?</p> <p>6 A. No, ma'am.</p> <p>7 Q. This article discusses New York City's stop</p> <p>8 and frisk program?</p> <p>9 A. In part, yes.</p> <p>10 Q. Actually, let me step back. This article</p> <p>11 breaks down in four subsets; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. One was New York City stop and frisk. And</p> <p>14 then another subset, and then the third subset is</p> <p>15 actually Houston Police Department, isn't it?</p> <p>16 A. Yes.</p> <p>17 Q. I'm sorry. The second subset is police</p> <p>18 public contract survey. And then it's Houston Police</p> <p>19 Department, correct?</p> <p>20 A. What pages are you on, ma'am.</p> <p>21 Q. I'm just flipping through it actually.</p> <p>22 A. Okay.</p> <p>23 Q. Go to Page 35, the conclusions.</p> <p>24 A. Yes, ma'am.</p> <p>25 Q. Discussion regarding the use of force in</p>	<p>1 A. I handed him --</p> <p>2 MR. LOEVY-REYES: I will just state for the</p> <p>3 record that, and I appreciate I said I didn't need</p> <p>4 a copy, but I did not get a copy of this document</p> <p>5 when you handed it to the witness. So Mr. Scott</p> <p>6 just handed me his copy of the study that you are</p> <p>7 questioning him about.</p> <p>8 MS. CALLAN: Okay.</p> <p>9 MR. LOEVY-REYES: So this is the only copy I</p> <p>10 have to review.</p> <p>11 MS. CALLAN: That's fine. We could make you</p> <p>12 a copy. I just want to make sure what the witness</p> <p>13 is handing to counsel.</p> <p>14 Turn to the last page.</p> <p>15 THE WITNESS: I don't have a last page,</p> <p>16 ma'am. I don't have Page 36.</p> <p>17 BY MS. CALLAN:</p> <p>18 Q. You don't have the Page 36 of.</p> <p>19 Counsel, for the record we'll just redo the</p> <p>20 copy because we're missing the last page.</p> <p>21 A. Would you like me to read it for the record?</p> <p>22 Q. I did. But the highlighted portion is what</p> <p>23 you said I was mumbling on.</p> <p>24 A. Yes, ma'am.</p> <p>25 Q. Could you read that to yourself again. And</p>
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<p>1 nonlethal situations, that incorporates the New York</p> <p>2 City information in the public police survey; does it</p> <p>3 not?</p> <p>4 A. Yes, referring to officer involved shootings,</p> <p>5 correct.</p> <p>6 Q. With regards to officer involved shootings,</p> <p>7 this study actually found that on the most extreme use</p> <p>8 of force officer involved shootings, we are unable to</p> <p>9 detect any racial differences in raw data or when</p> <p>10 accounting for control; is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. Doesn't this article also say on Page 36 that</p> <p>13 it is plausible that racial differences in lower level</p> <p>14 uses of forces are simply a distraction -- seek own</p> <p>15 communities rather than changing the behavior of other</p> <p>16 external forces?</p> <p>17 A. It's almost like you are mumbling, ma'am.</p> <p>18 I'm sorry. One more time.</p> <p>19 Q. Let me go back.</p> <p>20 You are being questioned by myself, correct?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. And you just handed documents to</p> <p>23 Mr. Loevy-Reyes, correct?</p> <p>24 A. Yeah, sure.</p> <p>25 Q. And so what did you just hand him?</p>	<p>1 then my question to you is is that what it states?</p> <p>2 A. Yes.</p> <p>3 Q. Let's look at the Northwestern University</p> <p>4 study that you referenced on page 15.</p> <p>5 This study did not include just Houston</p> <p>6 Police Department, did it?</p> <p>7 A. Based on my recollection it did.</p> <p>8 Q. So when it references Las Vegas Metropolitan</p> <p>9 Police Department, Portland Oregon Police Bureau.</p> <p>10 A. Are we looking at the same report, ma'am?</p> <p>11 I'm sorry.</p> <p>12 Q. Baker BLA001639?</p> <p>13 A. Yes.</p> <p>14 Q. So it wasn't just HPD?</p> <p>15 A. Based on what I'm reading in the</p> <p>16 acknowledgment, it appears to be related to</p> <p>17 predominantly HPD.</p> <p>18 Q. Will you agree with me HPD provided</p> <p>19 information for this report?</p> <p>20 A. Yes.</p> <p>21 Q. But they reference other law enforcement</p> <p>22 agencies?</p> <p>23 A. That's correct.</p> <p>24 Q. That was my question. We could move on.</p> <p>25 You know if that Northwestern University was</p>

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<p>1 peer reviewed?</p> <p>2 A. No, it was not based on what I recall.</p> <p>3 Q. Let's go to Page 16 and discuss the racial</p> <p>4 profiling opinion that you gave.</p> <p>5 You say it's based on?</p> <p>6 A. Which opinion are you on? I'm sorry. Which</p> <p>7 opinion are you on, ma'am?</p> <p>8 Q. I'm referencing your racial profiling that</p> <p>9 you comment for on Page 16.</p> <p>10 A. Page 15.</p> <p>11 Q. Sixteen.</p> <p>12 A. Sixteen.</p> <p>13 Q. Furthermore, Texas state law HPD are required</p> <p>14 to conduct annual racial profiling reports.</p> <p>15 As we discussed earlier you are aware that</p> <p>16 this is limited to discretionary and nondiscretionary</p> <p>17 traffic stops, motor vehicle stops?</p> <p>18 A. Yes, ma'am.</p> <p>19 Q. And nondiscretionary would mean that clear</p> <p>20 violation of the law or perhaps a warrant or some</p> <p>21 reason the officer has to stop them?</p> <p>22 A. Sure.</p> <p>23 Q. Let's go to opinion three, excessive force.</p> <p>24 Page 16, you state a review of surveillance</p> <p>25 camera from one of the stores in the shopping center</p>	<p>1 Q. Mr. Scott, we're going to start discussing</p> <p>2 opinion number four, which starts on Page 17.</p> <p>3 A. Yes, ma'am.</p> <p>4 Q. And this is -- your opinion is that it was</p> <p>5 excessive and unnecessary force that was used; is that</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. And based on case law as well as the best</p> <p>9 practice in law enforcement, the standard used to</p> <p>10 determine if the force is reasonable and necessary is</p> <p>11 an objective reasonable standard; is that correct?</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. And in fact, the supreme court has told us we</p> <p>14 shouldn't do a 20/20 hindsight review; is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. Do you think your opinion is based on a 20/20</p> <p>17 hindsight review?</p> <p>18 A. No. It's based upon the facts presented to</p> <p>19 me and what my experience, training and knowledge have</p> <p>20 led me to conclude.</p> <p>21 Q. Did you conduct your own independent</p> <p>22 investigation to determine if the force was reasonable</p> <p>23 and necessary?</p> <p>24 A. No, I did not.</p> <p>25 Q. And the methodology you used is what, the</p>
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<p>1 shows Officer Castro positioning his police car in</p> <p>2 front of Mr. Baker as he was riding his bicycle thus</p> <p>3 forcibly stopping him. It's uncertain if Officer</p> <p>4 Castro's positioning his car caused Mr. Baker to,</p> <p>5 quote, wreck on his bicycle and fall to the ground.</p> <p>6 Where do you come up with wreck?</p> <p>7 A. You know, and that's something that I'm</p> <p>8 mistaken at. That's not correct.</p> <p>9 Q. What is the mistake?</p> <p>10 A. I can't tell for sure if Mr. Baker fell to</p> <p>11 the ground or the bicycle went to the ground as he was</p> <p>12 being stopped by Officer Baker (sic). My mistake on</p> <p>13 that.</p> <p>14 Q. Or if he actually put it down himself?</p> <p>15 A. Correct, yes.</p> <p>16 Q. So let's go to opinion four.</p> <p>17 A. Can I break for the restroom again. I am so</p> <p>18 sorry.</p> <p>19 Q. Yes, that's fine.</p> <p>20 THE VIDEOGRAPHER: Time on the monitor is</p> <p>21 2:17. We're going off video record.</p> <p>22 (A break was had.)</p> <p>23 THE VIDEOGRAPHER: We're back on video</p> <p>24 record. The time on the monitor is 2:22 p.m.</p> <p>25 BY MS. CALLAN:</p>	<p>1 same methodology we have been discussing all day?</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. On Page 17, it's above opinion four, so</p> <p>4 forgive me if I'm going backwards. It states, quote,</p> <p>5 if -- that's two paragraphs above opinion four; if the</p> <p>6 additional injury suffered by Mr. Baker were due to</p> <p>7 falling off his bicycle because of being nearly struck</p> <p>8 by Officer Castro's car, the degree of force was</p> <p>9 unjustified and not objectively reasonable.</p> <p>10 Do you see that?</p> <p>11 A. Yes, ma'am. But I believe that I testified</p> <p>12 already that I was mistaken relevant to the wreck or</p> <p>13 causing him to fall off the bicycle.</p> <p>14 Q. You are not providing an opinion as to a</p> <p>15 medical cause of his injuries?</p> <p>16 A. No, ma'am.</p> <p>17 Q. All right. Paragraph right above where it</p> <p>18 says opinion four, where it says there's little wonder</p> <p>19 as to why Mr. Baker was agitated.</p> <p>20 What is the basis of that opinion other than</p> <p>21 speculation?</p> <p>22 A. There's no speculation. I believe that one</p> <p>23 of the witnesses indicated that Mr. Baker was agitated</p> <p>24 and was cursing at the police officer and what have</p> <p>25 you. Mr -- excuse me, Officer Castro identified in his</p>

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<p style="text-align: right;">Page 218</p> <p>1 made by, in our case, the District Attorney's Office; 2 is that true? 3 MR. LOEVY-REYES: Objection, foundation. 4 Go ahead. 5 BY MS. CALLAN: 6 Q. I'm sorry? 7 A. That is correct. 8 Q. And so the police department, pursuant to the 9 Brady obligation as well as the Michael Morton 10 Statutory Obligation in Texas, they turn over their 11 entire case file? 12 A. Yes, you would hope so, correct. 13 Q. And there's no evidence in this case that 14 they violated that, is there? 15 A. That's not been an issue of contention here. 16 Q. With regards to the trajectory, if the 17 autopsy photos and the medical examiner plus Dr. Arden, 18 plaintiff's expert, and Dr. Adler, defense's expert, 19 have taken the autopsy photos and shown the actual 20 trajectory through all of the organs that you 21 mentioned, and showed and testified that it is 22 consistent with Mr. Baker running at a slightly bent 23 angle starting to bleed when he was shot? 24 MR. LOEVY-REYES: Objection, mischaracterizes 25 the evidence in the record.</p>	<p style="text-align: right;">Page 220</p> <p style="text-align: center;">CERTIFICATE OF OATH</p> <p>1 THE STATE OF FLORIDA 2 COUNTY OF PALM BEACH 3 4 5 6 I, the undersigned authority, 7 certify that ANDREW J. SCOTT, 8 III personally appeared before 9 me and was duly sworn on the 5th 10 day of February, 2018. 11 12 Dated this 10th day of February, 13 2018. 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;"><i>Antoinette S. Garza</i></p> <p style="text-align: center;">Antoinette Garza, RPR, FPR Notary Public - State of Florida My Commission Expires: 7/1/20 My Commission No.: FF 971325</p>
<p style="text-align: right;">Page 219</p> <p>1 THE WITNESS: I have not seen that testimony, 2 however, they're medical examiners -- excuse me, 3 they're medical doctors. 4 BY MS. CALLAN: 5 Q. So you won't -- you will rely on the medical 6 expert testimony and you are not going to use your 7 opinion regarding trajectory if it conflicts with the 8 medical examiners or medical doctors? 9 A. Well, I'm going to state my opinion based 10 upon what I have seen in the autopsy reports. 11 MS. CALLAN: One moment. 12 I reserve the remaining questions for trial. 13 MR. LOEVY-REYES: No more questions. 14 THE VIDEOGRAPHER: The time is 2:58 p.m. 15 We're going off video record. 16 THE WITNESS: I will read. 17 MS. CALLAN: I'm ordering the transcript for 18 Monday. 19 MR. LOEVY-REYES: We'll hold off on a copy 20 for now. 21 (Witness excused.) 22 (Deposition was concluded.) 23 24 25</p>	<p style="text-align: right;">Page 221</p> <p style="text-align: center;">C E R T I F I C A T E</p> <p>1 THE STATE OF FLORIDA 2 COUNTY OF PALM BEACH 3 4 5 I, Antoinette Garza, Registered Professional 6 Reporter and Notary Public in and for the State of 7 Florida at large, do hereby certify that I was 8 authorized to and did report said deposition in 9 stenotype; and that the foregoing pages are a true 10 and correct transcription of my shorthand notes of 11 said deposition. 12 I further certify that said deposition was 13 taken at the time and place hereinabove set forth 14 and that the taking of said deposition was commenced 15 and completed as hereinabove set out. 16 17 I further certify that I am not attorney or 18 counsel of any of the parties, nor am I a relative 19 or employee of any attorney or counsel of party 20 connected with the action, nor am I financially 21 interested in the action. 22 23 The foregoing certification of this transcript 24 does not apply to any reproduction of the same by 25 any means unless under the direct control and/or direction of the certifying reporter. Dated this 10th day of February, 2018. <i>Antoinette S. Garza</i> Antoinette Garza, RPR, FPR</p>

